THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.25993 OF 2005

Dated: 3rd February, 2006.

Between:

1. BHEL (R & D) Employees Cooperative Housing Society Limited, rep. by its President Sri C.N. Srinivasan, S/o.C.A.Narayana, aged 54 years, R/o. Malkajgiri, Hyderabad and another. …. Petitioners

And

1. Government of Andhra Pradesh, Housing (CH) Department, Rep. by its Secretary, Secretariat, Hyderabad and others. … Respondents

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WRIT PETITION NO.25993 OF 2005

ORDER :

The 1st petitioner is the B.H.E.L. (R&D) Employees Co-operative Housing Society

Limited and the 2nd petitioner is the President of the 1st petitioner society. The petitioners seek a Writ of Mandamus declaring the proceedings of the 1st respondent - Government of A.P., dated 2-12-2005 as arbitrary, illegal and without jurisdiction.

It is stated that the first petitioner is a Co-operative society registered under the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') which is not in receipt of any State aid. It is not in dispute that the 4th respondent herein was the President and the respondents 5 to 7 were the members of the erstwhile Managing Committee of the first petitioner society. It appears that on the basis of certain alleged acts of misfeasance and malfeasance in buying the land with the funds of the 1st petitioner society, surcharge proceedings were initiated against the said erstwhile Managing Committee including the respondents 4 to 7. It also appears that in response to the show-cause notice, the respondents 4 to 7 admitted the allegations and offered to pay the surcharge amount of Rs.30 lakhs on the condition that the land purchased by the 1st petitioner society must be registered in their personal names. Be that as it may, the surcharge proceedings as well as the criminal proceedings against the respondents 4 to 7 and other members of the Managing Committee are still pending. While so, on 27-10-2005 the present Managing Committee of the first petitioner society passed a resolution to conduct elections to the society before the expiry of the term on 17-12-2005 in exercise of its powers and functions under Section 31 (2) (c) of the Act read with Bye-law No.22 of the society. Accordingly, Election Officer was appointed to conduct elections and as per the election programme issued by the Election Officer the nominations were received on 24-11-2005 and the scrutiny of nominations took place on 25-11-2005 and the final list of nominations after withdrawals was also published on 26-11-2005 at 4.00 pm.

Admittedly, the 2nd petitioner as well as the fourth respondent and his panel filed nominations and the polling was scheduled to be held on 3-12-2005. As the matter stood thus, the 1st respondent - Government of A.P. issued a memo dated 2-12-2005 staying the election scheduled to be held on 3-12-2005 until further orders and the same was served on the 1st petitioner society by the Divisional Co-operative Officer-cum-Joint Registrar, Hyderabad.

The said memo dated 2-12-2005 is under challenge in this writ petition contending inter alia that the State Government has no power or authority to interdict the election process. It is contended that since the first petitioner society is not in receipt of any State aid, the authority to conduct elections to the society exclusively vests with the Managing Committee under Section 31 (2) (c) of the Act and therefore the impugned memo is wholly without jurisdiction.

On behalf of the 1st respondent, a counter-affidavit has been field in which the fact that the 1st petitioner society is an un-aided society has not been disputed. So far as the plea of the petitioners that surcharge orders were passed against the members of the erstwhile Managing Committee including respondents 4 to 7 is concerned, it is stated that the Appeal (CTA.No.125/2001) filed against the order of surcharge was disposed of, thereby setting aside the surcharge order and accordingly fresh enquiry under Section 60 of the Act is under process. It is further stated that the nomination filed by the 4th respondent seeking election as Member of the Managing Committee was rejected by the Election Officer and that when the members of the society approached the Government and represented that no proper opportunity was given to the members to participate in the elections, the Government vide proceedings dated 2-12-2005 stayed the elections of the 1st petitioner society until further orders and the election will be conducted in due course.

In the counter-affidavit filed by the fourth respondent, it is stated that the election notification itself was defective since the same was issued under Rule 22 (4) (a) of the Rules which relates to nomination of candidates, but not issuance of notification. It was also contended that as per Rue 22 (2) (b) (vi) the Election Officer has to fix the date of poll giving a clear fifteen (15) days election notice as prescribed in Form-1 and the notice shall be signed by the Election Officer and bear the seal of the society. However, in the case on hand, there was no clear 15 days notice. Though the said irregularities were brought to the notice of the Election Officer, no action was taken by him and therefore they made a representation before the State Government. In pursuance thereof, the State Government issued the impugned

memo dated 2-12-2005 staying the election. It is further contended that the first respondent – Government of A.P. in exercise of powers under Section 131 of the A.P. Co-operative Societies Act, 1964, is competent to issue orders and directions in respect of any co-operative society and pass appropriate orders as they may think fit and therefore the impugned order cannot be said to be without jurisdiction and illegal.

I have heard the learned Counsel for both the parties and perused the material on record.

As can be seen from the material on record, the impugned memo dated 2-12-2005 was issued on a representation made by the respondent No.4 and others before the Minister for Co-operation alleging that the present Managing Committee of the society enhanced the share capital from Rs.100/- to 300/- without giving any proper notice to the members of the society and they were also not given opportunity to pay the difference in the share capital and consequently only 200 members were found to be eligible as against about 1300 members. It was also alleged that election notice under Rule 22 (4) (a) issued by the Election Officer was defective. On the basis of the said representation, the impugned memo was issued staying the election.

It is relevant to note that there is no provision under the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') which specifically empowers the Government to stay the elections. Though under Section 131 of the Act the Government is competent to issue such orders and directions to the Registrar generally or in any particular matter in the interest of co-operative movement in the State, which the Registrar is bound to implement, I am unable to hold that the said power can be extended to interdict the election process on the ground of irregularities either in the procedure adopted by the Election Officer or the irregularities in the preparation of the voters lists. A perusal of Section 131 of the Act shows that the orders and directions that may be issued by the Government shall be in accordance with the provisions of the Act. Thus, it is clear that the order or direction that may be issued by the Government under Section 131 of the Act while calling for the record of the proceedings of the

Registrar shall be an order or direction which is permissible under the provisions of the Act.

Therefore, the question is whether the directions issued by the Government under the impugned memo to stay the elections are in accordance with the provisions of the Act. In other words, whether the Act contemplates for interdicting the election process and if so under what circumstances.

The only provision which provides for postponement of elections is Rule 22-C of the A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules') which runs as under :

> *"22-C. (1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections under one or more of the following circumstances :-*
>
> *(i) Break down of law and order affecting the peaceful and lawful conduct of elections.*
>
> *(ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.*
>
> *(iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.*
>
> *b) The postponement hall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommended when the conditions become conductive for recommencing of election, by issue of an order by the Authority that has postponed the elections. The process will recommence from the stage at which it was obstructed or interrupted."*

Though there can be no dispute about the power conferred on the Government or the Election Authority under Rule 22-C to postpone the elections, it is relevant to note that such postponement shall be only under any of the grounds enumerated under Sub-rule (1) of Rule 22-C. Hence, the power conferred on the Government under Section 131 of the Act to give directions cannot be extended to interdict the election process on the grounds other than that are mentioned under Rule 22-C.

In the case on hand, obviously, the postponement was not on any of the grounds mentioned under Rule 22-C (1). Therefore, postponement of elections merely on the basis of certain complaints received from the members of the society with regard to the alleged irregularities in grant of membership or the defects in the election process, being not permissible under the provisions of the Act and the Rules cannot be ordered even in exercise of the power under Section 131 of the Act. Thus, on the face of it, the impugned memo is not in conformity with the statutory provisions.

Though the learned Counsel for the petitioner contended that since admittedly the 1st petitioner society is not receiving any State aid, as per Section 31 (2) (c) it shall be the responsibility of the incumbent committee of the society to hold elections to the office of the members of the committee in the manner specified in the bye-laws and therefore Rule 22-C is not applicable and consequently the election process of the petitioner society cannot be interdicted under any circumstances, I am unable to agree. Rule 22-C which starts with a non-obstante clause applies even to the societies which are not receiving any State aid. It is clear that Rule 22-C is different and distinct from Rule 22 and therefore in my considered opinion even with regard to the societies which are not receiving any State aid, the Government or the Election Authority may direct the postponement of elections under any of the circumstances mentioned thereunder.

So far as the merits of the present case are concerned, even assuming that there were certain irregularities in enrolment of the members of the society and preparation of the voters lists as alleged by the respondents 4 to 7, as held in SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA v. STATE OF MAHARASHTRA and K. APPA REDDY vs. ELECTION OFFICER, the same can at the most be a valid ground to raise an election dispute after the declaration of the result. Sub-sections (3) and (4) of Section 61 of the Act in clear terms provide that any dispute relating to any election to a committee of a society shall be referred to the Tribunal only after the date of declaration of the result of such election.

A Division Bench of this Court in M.A.R.V.S. SAI BABA vs. COMMISSIONER OF CO-OP. SOCIETIES while dealing with an identical question relating to postponement of election under Rule 22-AAA of the Rules, as it stood prior to amendment of the Rules under G.O.Ms.No.15, dated 15-1-2002, held as under :

> *"The matter relating to irregularities in the electoral list-either wrong admission of members or wrong deletions of the valid members from the electoral roll-is not a matter which falls for action under Rule 22-AAA of the Rules in view of the discussion mentioned supra as this is one squarely covered either by Section 32 (7) (a) of the Act before the commencement of the election process or Section 61 (3) of the Act or sub-sections (3) and (4) of Section 61 of the Act after the election process starts. In the instant case, there is no dispute that the process of election has commenced and as such, the action in postponing the elections on the ground of irregularities in the voters' list is invalid as being contrary to the provisions contained under sub-sections (3) and (4) of Section 61 of the Act. … ....."*

In the light of the ratio laid down in the above decisions and having regard to the reasons stated supra, in my considered opinion, the impugned memo dated 2-12-2005 staying the election to the 1st petitioner Society is arbitrary, illegal and without jurisdiction.

Admittedly, the 1st petitioner society is not receiving any State aid as specified in Section 43 of the Act and therefore under Section 31 (2) (c) of the Act read with Rule 22 (1) (a) and (b) of the Rules the incumbent managing committee itself is competent to hold the election. The said fact has not been disputed by the respondents. It is also not in dispute that the term of the 1st petitioner society was subsisting till 17-12-2005 and admittedly the election was scheduled to be held on 3-12-2005. The election process was commenced by the incumbent committee much prior to expiry of its term and the election notice was issued on 18-11-2005. As a matter of fact, as per the election programme, the election process had already commenced and except polling all other proceedings were completed by 2-12-2005 including the publication of final list of nominations and allotment of symbols. Whereas the polling was scheduled to be held on 3-12-2005, the impugned memo was issued on 2-12-2005. In the circumstances, though the learned Counsel for the

4th respondent vehemently contended that since as on today the term of the incumbent committee had expired, the said committee cannot be permitted to continue the election process, I am unable to agree. The mere fact that the term of the committee expired during the pendency of this writ petition shall not be a bar to grant the relief to the petitioners, since the impugned memo was found illegal and without jurisdiction.

Accordingly, the impugned memo dated 2-12-2005 issued by the 1st respondent – Government of A.P. is set aside and the Writ Petition is allowed with a direction to the 3rd respondent – Election Officer to continue the election process from the stage where it was stopped. No costs.

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G. ROHINI, J.

Dt.03–02-2006.

GBS